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February 16, 2021

VIA: CM/ECF

The Honorable Sanket J. Balsara  
United States Magistrate Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

RE: *Schmitt v. China XD Plastics Co. Ltd., et al.*, No. 1:20-CV-06028

Dear Judge Balsara:

We write on behalf of Defendants to request leave to file a short response to Plaintiff's February 12, 2021, letter.

In accordance with the Court's Minute Order and Entry dated February 1, 2021, we submitted a letter brief on behalf of all Defendants in further support of a motion to stay this action (the "Stay Motion") on February 5, 2021. The letter requested a stay of this action based on the Court's inherent authority, *Colorado River* abstention, and the *Kappel* factors based on the parallel prior-filed Nevada action wherein the Nevada court already denied a motion for preliminary injunction months ago and based on a settlement term sheet in that matter that will moot Plaintiff's claims, subject to the Nevada court's approval and stockholder opt-out rights.

On February 12, 2021, Plaintiff submitted a letter in opposition to the Stay Motion (the "Opposition Letter"), announcing for the first time that he intended to amend his complaint to, among other things, eliminate all claims and allegations as to breaches of fiduciary duty and convert Plaintiff's individual claims under the federal securities laws to class claims.<sup>1</sup> Plaintiff attached as Exhibit A to the Opposition Letter his proposed amended complaint, and stated that it would be filed by Monday, February 15, 2021 (although we do not believe it has been filed to date). Based on this tactic, Plaintiff contends that the Stay Motion is moot and that he should be permitted to pursue

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<sup>1</sup> While Plaintiff has indicated that he intends to remove all claims against the Special Committee Defendants, given the pendency of the Stay Motion, the Special Committee Defendants nonetheless join in this request.



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expedited relief to enjoin the closing of the merger even though the stockholders approved the merger in a fully informed vote months ago.

In light of these new issues raised for the first time in the Opposition Letter, and his proposed amended complaint, Defendants respectfully request leave to submit a three-page reply letter in further support of the Stay Motion by Friday, February 19, 2021. In short, Defendants wish to explain, with appropriate legal citation, that Plaintiff's attempt to circumvent the Stay Motion is frivolous and that there is no basis for this federal disclosure action, even in its amended form, to proceed given the prior stockholder vote and the proposed settlement in Nevada which will moot Plaintiff's newly added class claims.

We appreciate the Court's consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darren J. Lemieux".

Darren J. Lemieux  
*Pro Hac Vice*  
Lewis Roca Rothgerber Christie LLP  
*Attorney for Defendant China XD Plastics  
Company Limited and Taylor Zhang*

/s/ J. Colby Williams

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cc: Ryan M. Philp, Esq., Counsel to Special Committee